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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. STEVEN DEMOCKER, Defendant	**VP1300CR201001325** **MOTION TO MODIFY RELEASE CONDITIONS:** ***OWN RECOGNIZANCE*** **(Hon. Warren Darrow)**

The Defendant, by and through counsel undersigned, moves the court to Hear and Decide this Motion concerning Release conditions, per Rules 7.2(a)[1], and 14.3 of the Arizona Rules of Criminal Procedure.[2] The Defendant is asking this Court for an O.R. release (own recognizance).

The Court should take into consideration that the Defendant has been in custody 2 ½ years, and in solitary confinement for over six months. Despite an extensive investigation about the death of Carol Kennedy, with a cast of characters large enough to fill a detective novel, all of

[1]Rule 7.2(a)Right to release: Any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the *least onerous conditions* ... which will reasonably assure the person's appearance.

[2] Rule 14.3(b)Proceedings at arraignment: "The Court shall ... hear and decide motions concerning the conditions of release under Rule 7."

whom had access and opportunity to have caused the "fatal blow," only the Defendant was ever considered a suspect. The Defendant remains the only suspect, despite the fact that the state documented some truly bizarre behavior by those close to Ms. Kennedy during this same time period.

The Defendant remains the only suspect, despite the fact that the state cannot place him at the scene of the crime: no DNA, no fingerprints or other biological evidence, and no confession. Importantly, these facts will never change – no new evidence will surface that could place him at the scene of the crime – *because he was not there and did not murder Carol Kennedy.*

The case revolves around a conclusion-based investigation. Unfounded suspicion was directed at the Defendant on the night of the murder, with no more substance than "the ex did it! – it's always the ex."

When 9 members of the previous jury were questioned by the Defense, their answers revealed a leaning towards an acquittal (by a vote of 5 to 3, with 1 undecided). To be fair, this "straw poll" cannot be taken as a scientific fact/vote, because the vote was taken after the mistrial, and without all of the state's case having been presented (although a fair amount of evidence and testimony had been presented – along with a comprehensive opening argument which outlined the state's case). An equally important fact, though, is that *none* of the Defense case had been presented.

That straw poll of the original jurors did not focus on the "new" counts in the new Indictment. However, the jurors did have access to the thorough media coverage post-mistrial before we talked with them. Thus, the conversations did not happen in a tightly sealed vacuum. The Defense maintains that the new counts in the new Indictment will not effect the outcome of

the murder counts, because there is simply no physical evidence that the Defendant murdered Carol Kennedy.

The Defense further maintains that the new counts in the new Indictment were improperly joined with the murder case. This improper joinder was accomplished via the very state-friendly grand jury process – where there is no judicial input as what is relevant or admissible evidence. The fact that the state sought to pile on these charges after the mistrial is an indication that the state's case is weaker now than before the original trial.

The Defendant is entitled to a hearing on release conditions. If this Court denies the above modifications, the Defendant requests the bond be reduced from $2,000,000.00 cash only bond, to $10,000.00 secured bond.

Finally, if the bond hearing process ends with no change in release conditions, then the Defendant requests a transfer to another jail facility in a different county, like Coconino County. The Yavapai County Sheriff is unwilling to house the Defendant in any other dorm than a solitary confinement dorm (23 ½ hours in the cell per day). The Defendant has been in solitary confinement[3] for 6 months! He has not been outside since September of 2010. This is not a humane arrangement.

The Yavapai County Sheriff and Jail Staff have decided that it is a "safety" risk for the Defendant to be taken out of solitary confinement and placed back into the higher-security-general-population-dorm, or "GP Max." This presumably relates back to an October 4, 2010 *allegation* that there was an "ordered beat down" on an inmate, Jerald Lee, for which there was a

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[3]The Jail may call the Defendant's solitary confinement a more politically correct name than solitary confinement, but as the saying goes, "a rose by any other name ...."

very thorough investigation. However, there was no evidence that the Defendant "ordered" any beat down. In the state's October 7, 2011 Search Warrant Affidavit[4], for instance, several inmates were interviewed and quoted, but not one inmate implicated the Defendant in the "beat down," nor as being a "jail boss." Det. Johnson's Affidavit did mention that the Defendant may be able to watch golf on TV occasionally, which the other inmates allowed, merely out of good will. The source of the controversy centered on an allegation that Mr. Lee had generated a document which named other inmate/defendants – and which contained information invented by Lee to curry favor with the state and to seek a better deal. There was no evidentiary value nor credibility in what Mr. Lee had written in that document.

The state will argue that the Jail had a right to internally handle the Lee event, including placing inmates into solitary. But that was six months ago. Solitary should have ended long ago.

Despite the fact that he was known not to be credible, Mr. Lee was recently interviewed by the state – *again* – on February 1, 2011. In this latest interview, Mr. Lee had come up with some new and preposterous allegations. The bottom line remains the same: Mr. Lee is not credible, nor was any allegation that somehow the Defendant participated in ordering the "beat down" credible. It was simply NOT true.

Yet – contrary to the Jail's position that the Defendant solitary confinement status is a "safety issue," recently the Jail inexplicably moved the Defendant into another dorm and into close proximity *with* Mr. Lee! The Defendant saw Mr. Lee, and heard him referred to by name. It is unknown why Mr. Lee was in the Jail at that time. Then, the Defendant did the right thing and immediately alerted the Jail Staff about Mr. Lee, and the Jail moved the Defendant back into solitary.

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[4]Written by Det. John Johnson.

What could be the purpose of moving the Defendant into close proximity with Mr. Lee?

Solitary confinement in this case is now the norm. Most, if not all of the inmates that were present back in October 2010 have moved on. The Defense does not agree that there were ever any bona fide safety issues. And, certainly any perceived safety issues had to have ended when the inmates left by definition. In any event, solitary confinement is not a solution to an *imagined* danger. Solitary should be used only in extreme instances.

The United Nation General Assembly passed guidelines for the "Basic Principles for the Treatment of Prisoners," on December 14, 1990, which included Section 7:

> "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."

One cannot argue with a straight face that solitary confinement is anything but *punishment*. However, at this stage in this case, punishment is <u>not</u> appropriate. The Defendant is still presumed innocent until proven guilty of each and every count beyond a reasonable doubt.

> "It's an awful thing, solitary," John McCain wrote of his five and a half years as a prisoner of war in Vietnam—more than two years of it spent in isolation in a fifteen-by-fifteen-foot cell, unable to communicate with other P.O.W.s except by tap code, secreted notes, or by speaking into an enamel cup pressed against the wall. "It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment." And this comes from a man who was beaten regularly; denied adequate medical treatment for two broken arms, a broken leg, and chronic dysentery; and tortured to the point of having an arm broken again. A U.S. military study of almost a hundred and fifty naval aviators returned from imprisonment in Vietnam, many of whom were treated even worse than McCain, reported that they found social isolation to be as torturous and agonizing as any physical abuse they suffered.[5]

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[5] Source: http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande#ixzz1HvfuWaXL McCain quote from: *Hellhole: The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture?* by Atul Gawande, March 30, 2009.

In this case, the Defendant is being denied human company, except for the guards, and must remain in his cell for 23 ½ hours a day. When released, he must then do all of his cleaning, exercise and communicating with family in just 30 minutes. Can this truly be solely up to the discretion of the Jail?

Dr. Stuart Grassian, a Board Certified Psychiatrist and member of the faculty of the Harvard Medical School since 1974, argued in "Psychiatric Effects of Solitary Confinement"[6] that solitary confinement creates devastating mental issues, among which are the inability to focus attention (sufferers can't concentrate and experience memory loss) and the inability to shift attention (mental fixations leading to obsessive thoughts and paranoia).

> The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances.

("Psychiatric Effects of Solitary Confinement," pg 13, "Conclusions").

Solitary may adversely affect the Defendant's ability to participate in his defense. The Defendant has a Sixth Amendment Right to participate in his defense.

> The United States Constitution guarantees more than a right to counsel. The fundamental guarantee of the sixth amendment is the defendant's right to control and participate in his defense.
>
> The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." ...
>
> It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy .... This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative.

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[6]Source: http://www.prisoncommission.org/statements/grassian_stuart_long.pdf

Bishop v. Superior Court, 150 Ariz. 404, 406, 724 P.2d 23, 25 (Ariz.,1986), citing Faretta v. California, 422 U.S. 806, 819-20 (1975).

Conclusion

There have been numerous hearings concerning release conditions in the old case. Because there is a new Indictment, the Defendant is entitled to a new hearing on release conditions. The Defendant requests an O.R. release. In the alternative, the bond should be reduced from $2,000,000.00 cash only bond, to $10,000.00 secured bond.

In the alternative, if the Court will not lower the bond, then the Defendant requests the Court Order that he be housed in the Coconino County Jail, for the above-stated reasons.

RESPECTFULLY SUBMITTED this April 5, 2011.

By _____
Craig Williams
Attorney for the Defendant

Copies of the foregoing mailed/faxed this date to
Hon. Warren Darrow, Judge of the Superior Court
Jeff Paupore, Yavapai County Attorney's Office
The Defendant

By _____